29th Congress,
2d Session.

[SENATE.]

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REPORT

OF

THE SECRETARY OF WAR,

COMMUNICATING

A report from the Commissioner of Indian Affairs, in answer to a resolution of the Senate calling for copies of instructions to commissioners under the 17th article of the Cherokee treaty of 1835–'36.

January 15, 1847.—Referred to the Committee on Indian Affairs.

February 3, 1847.—Ordered to be printed.

War Department, *January* 14, 1847.

Sir: I have the honor to transmit herewith a report of the Commissioner of Indian Affairs, made in compliance with a resolution of the Senate of the 4th instant, requiring the Secretary of War to communicate to the Senate "copies of all instructions given by the War Department, or from the Office of Indian Affairs, to all or any of the commissioners from time to time appointed to adjudicate claims under the treaty of 1835–'36, between the United States and Cherokee nation of Indians."

Very respectfully, your obedient servant,

W. L. MARCY,
Secretary of War.

Hon George M. Dallas,
President of the Senate.

War Department,
Office Indian Affairs, January 13, 1847.

Sir: In answering the resolution of the Senate of 4th instant, requiring copies of all instructions given to the several boards of commissioners appointed under the 17th article of the Cherokee treaty of 1835–'36, to adjudicate claims arising under that treaty, I have the honor first to remark that to the existing board no instructions whatever were given, either in relation to their jurisdiction with respect to the character of the claims upon which they should act, or any principles or mode they should adopt in their adjudication. In order, however, to facilitate their labors, by informing them of the ground which had already been covered, and generally what had been the action, opinions, and views of the previous boards, and of the Executive, in relation to claims arising under the treaty in question, all the records and papers of those boards were turned over

Ritchie & Heiss, print.

to them, with a communication from this office enclosing two to previous boards, and referring to others which had been furnished to and printed by Congress. A copy of the communication referred to, and of one of the enclosures—the other having been furnished the Senate—are respectfully submitted, marked A and B. Other papers herewith, accompanied by a schedule marked C, embrace, it is believed, copies of all the communications to the commissioners, in any way bearing the character of instructions, that have not already been furnished to the Senate in answer to previous resolutions of that body. Of the papers so furnished, the list D shows what have been printed, and where they will be found. Paper E is a list of those furnished in answer to a resolution of 20th December, 1843, which were not printed by the Senate, but which were subsequently printed by order of the House of Representatives, and will be found in report No. 391, 28th Congress, 1st session. With the press of business upon the office, to recopy all the papers thus heretofore furnished would occupy the greater part of the remainder of the present session of Congress. In order, therefore, to save time, and in conformity with the practice in such cases, the office has not gone further than to prepare the references to them above mentioned.

I have the honor to be, very respectfully, your obedient servant,

W. MEDILL.

Hon. W. L. MARCY,
Secretary of War.

A.

WAR DEPARTMENT,
Office Indian Affairs, August 27, 1846.

GENTLEMEN: Having been appointed by the President of the United States, by and with the advice and consent of the Senate, pursuant to a provision in the act making appropriations for the Indian department, approved 27th June, 1846, as commissioners under the 17th article of the Cherokee treaty of 1835–'36, and having accepted of said appointment, it devolves upon this department to put you in possession of such documentary information as it possesses which pertains to the duties intrusted to you.

The various records and accompanying papers of the three boards which have preceded you are on deposite in this office, and will be handed over to you on your signifying a wish to that effect. From them you will be able to inform yourselves of the extent of the action of your predecessors on the various claims submitted to them, and which, if any, of those submitted have not been finally disposed of.

The first board continued in session from December, 1836, to 5th March, 1839. The second was in existence from November, 1842, to January, 1844; and the third was commissioned in June, 1844, and expired by limitation of law on 17th June, 1845.

The accompanying copy of a communication from this department to Messrs. Carroll and Lumpkin, of 1836; the copy of a communication from this office to the second board, of 28th September, 1842, to be found in House report No. 391, 28th Congress 1st session, pages 17 to 24; and the enclosed copy of a letter from my predecessor of 20th June, 1844, to the third commission, embody the views of the department, at the respective dates, respecting the various classes of claims arising under the Cherokee treaty of 1835–'36. Those views may be modified in some degree by the provisions of the treaty recently made between the United States and the Cherokees; but as the law making provision for the organization of the present commission provides for the reference of any case to the Attorney General in which you may differ in opinion, it is not regarded by the department as necessary to give you special instructions in the premises. I refer you, however, to the House document above named, at page 58, for an opinion of Attorney General Legaré respecting the jurisdiction of the commission, and the duties of the executive officers in regard to the decisions of said board, and suggest that you fully and freely advise with this department on the several matters committed to you.

In view of the modification of certain parts of the treaty of 1835–'36, by that just ratified, and of the change consequent thereupon, it is deemed advisable by this department that no certificates be issued by your commission on the decrees that you may make, until you shall be informed by it that there is money in the treasury applicable to their payment.

The compensation allowed the commissioners of the two preceding boards was $3,000 per annum each, and that of the secretaries $1,500. But the act of 1846, which provides for the appointment and organization of the present board, appropriates only $7,000 for the expenses thereof for one year, including as well the compensation of the commissioners and secretary, as the contingent outlays which must necessarily attend their sittings. The department having no other means at its disposal which are applicable to this object, your compensation is limited to such sum as the said $7,000 will afford, after deducting therefrom the necessary contingent expenses of the board, and a rate of compensation to the secretary which shall be equal to one-half of that received by each of the commissioners: provided, however, that the same shall not exceed the rate of $3,000 per annum each.

W. D. Miller, esq., of Texas, at present in this city, has been appointed the secretary of your board, and will be directed to report to you for duty.

Until otherwise directed by the President of the United States, it is expected that you will sit in this city; and as the duration of your appointment has been limited, it is necessary that you should immediately organize and enter upon the discharge of your duties.

Very respectfully, your obedient servant,

W. MEDILL.

B. H. BREWSTER and EDW. HARDIN, Esqs.,
Commissioners.

B.

WAR DEPARTMENT,
Office Indian Affairs, June 20, 1844.

GENTLEMEN: As the books and papers pertaining to the business confided to you by the President of the United States have been delivered to you to-day, I deem it proper to inform you of the views of this department respecting the various classes of claims that are embraced by the treaty of 1835–'36 with the Cherokees, and which, as commissioners under the 17th article of that treaty, it is your duty to examine and decide. As those views were fully expressed in every material point in the communication of 28th September, 1842, to your immediate predecessors, and as it has been printed in report No. 391 of House of Representatives United States, at last session, it is only necessary to refer you to this document, of which I send a copy. The same document also contains the opinions and decisions of the department on special cases arising under said treaty, to which I invite your attention.

Your compensation has been fixed at $3,000 per annum each, and that of your secretary at the rate of $1,500 per annum, respectively, inclusive of all charges.

As Congress has limited the duration of the term of your commission to one year from 17th instant, and as it has been represented to this department that a large number of claims await your action in the Cherokee nation, I deem it proper to urge upon you the importance of your going to that nation with all practicable convenient despatch, consistent with such duties as may devolve upon you here.

Very respectfully, your obedient servant,

THOS. H. CRAWFORD.

Hon. John T. Mason,
Hon. Geo. C. Washington,
Cherokee Commissioners.

C.

List of papers accompanying report of Commissioner of Indian Affairs to the Secretary of War on the resolution of the Senate of the United States, January 4, 1847.

Copy of letter from Commissioner Indian Affairs to Cherokee commissioners, dated January 20, 1837.

Copy of letter from Commissioner Indian Affairs to Cherokee commissioners, dated December 12, 1837.

Extract of letter from Commissioner Indian Affairs to Cherokee commissioners, dated January 24, 1838.

Extract of letter from Commissioner Indian Affairs to Cherokee commissioners, dated January 29, 1838.

Extract of letter from Commissioner Indian Affairs to Cherokee commissioners, dated February 5, 1838.

Copy of letter from Commissioner Indian Affairs to Cherokee commissioners, dated February 8, 1838.

Copy of letter from Commissioner Indian Affairs to Cherokee commissioners, dated May 9, 1838.

Copy of letter from Commissioner Indian Affairs to Cherokee commissioners, dated May 26, 1838.

Copy of letter from Commissioner Indian Affairs to Cherokee commissioners, dated June 14, 1838.

Copy of letter from Commissioner Indian Affairs to Cherokee commissioners, dated June 19, 1838.

Copy of letter from Commissioner Indian Affairs to Cherokee commissioners, dated June 20, 1838.

Copy of letter from Commissioner Indian Affairs to Cherokee commissioners, dated September 7, 1838.

Copy of letter from Commissioner Indian Affairs to Cherokee commissioners, dated September 14, 1838.

Copy of letter from Commissioner Indian Affairs to Cherokee commissioners, dated September 25, 1838.

Copy of letter from Commissioner Indian Affairs to Cherokee commissioners, dated October 15, 1838.

Copy of letter from Commissioner Indian Affairs to Cherokee commissioners, dated January 14, 1839.

Copy of letter from Commissioner Indian Affairs to Cherokee commissioners, dated February 11, 1839.

Copy of letter from Commissioner Indian Affairs to Cherokee commissioners, dated February 11, 1839.

Copy of letter from Secretary of War to Commissioner Indian Affairs, dated January 17, 1844.

Copy of letter from Commissioner Indian Affairs to Cherokee commissioners, dated January 17, 1844.

Copy of letter from Commissioner Indian Affairs to Gen. J. T. Mason, commissioner, dated March 11, 1845.

Copy of letter from Commissioner Indian Affairs to Cherokee commissioners, dated May 26, 1845.

Copy of letter from Acting Secretary of War to Cherokee commissioners, dated June 18, 1845.

WAR DEPARTMENT,
Office Indian Affairs, January 20, 1837.

GENTLEMEN: You will receive with this copies of papers relating to the claims of James Brown, W. S. Coodey, and Ann and J. L. & S. W. Hyatt. I would most respectfully request you to investigate these claims, although they do not come within any class of the duties confided to you, and report the facts you may ascertain, and the opinions you may form, for the information of the department. No expense in collecting evidence in regard to them can be authorized.

Very respectfully, your obedient servant,

C. A. HARRIS.

HON. WILSON LUMPKIN,
JOHN KENNEDY, Esq.,
New Echota, Georgia.

WAR DEPARTMENT,
Office Indian Affairs, December 12, 1837.

GENTLEMEN: I have before advised you that your letter of the 15th September last, proposing certain questions for the opinion of the Attorney

General, had been referred to him. I have now the honor to enclose a copy of his communication in reply to those questions, and to others presented by this office, of which I send a copy.*

You will perceive that two classes of reservees are to be paid for their claims by the United States. You will therefore please to transmit, as early as practicable, an estimate of the amount that will be required, that an appropriation may be obtained.

The opinion in answer to your first question is understood as admitting that claimants to reservations under treaties prior to December, 1835, whether they reside on the ceded or unceded territory, are entitled to payment therefor if in such unceded territory; but not for improvements thereon under the last treaty, the ninth article of which is considered to be exclusively applicable to the lands then ceded.

The employment of counsel to guard against improper or ill-founded claims for reservations, is sanctioned. You are authorized to select them, and they will be paid such compensation for their services as you shall certify to be reasonable and just.

Very respectfully, your obedient servant,

C. A. HARRIS.

Hon. W. LUMPKIN.
J. KENNEDY,
THOMAS W. WILSON, Esquires,
Calhoun, Tennessee.

Extract from a letter of C. A. Harris, esq., Commissioner of Indian Affairs, to Messrs. Kennedy and Wilson, commissioners, &c., dated January 24, 1838.

"I have the honor to transmit herewith a letter from Lieutenant J. Van Horne, addressed to you, and dated 3d ultimo, which, for want of knowledge of the proper direction, that gentleman forwarded to this office. It appears to me that the difficulty which Lieutenant Van Horne points out, of determining what individuals are entitled to payments in the cases mentioned, is well-founded, and should, if possible, be removed. I respectfully request that you will communicate with that officer upon this subject, and afford him such aid as may be in your power, to enable him to make payments safely.

"It has been supposed in this office that all *valid* claims for improvements abandoned by Cherokees, under the treaty of 6th May, 1828, with the portion of the nation west, have been paid or otherwise satisfactorily accounted for. If any such shall be laid before you, you will proceed to examine them, and receive all the evidence in their support, and forward the whole to this office. This will be done for the purpose of comparing them with the valuation and pay rolls here, before any order will be made in relation to payment. I have to request that in making up these cases you will designate the present claimant, his or her residence, the manner in which the claim accrues, whether as original owner or as legal representative of such owner; and, in the latter case, the nature of that repre-

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*For communication of Attorney General, see House Doc. No. 123, 26th Congress, 2d session, p. 1161 *et seq.*—"Opinions Attorneys General."

sentation—whether as heir, executor, administrator, or assignee; and with each case transmit a transcript of the valuation roll, with the names of the valuing agents, and the location of the property.

"Upon referring to Governor McMinn's accounts in the Auditor's office, the abstracts of the payments made by him for improvements appear to have been withdrawn, and cannot now be found readily. A search will be made for them, and for those relating to the payment to Milton and Hicks; and in the mean time, to give you an idea of the character of the information to be gleaned from the accounts, I enclose a copy of one of the vouchers. As it is not easy to infer, from your general statement, the precise object in view, I am doubtful whether this information will be of service. You will please make a more full communication upon this subject, giving the names of all the agents by whom disbursements were made, so far as you can ascertain them."

Extract of a letter from C. A. Harris, Commissioner of Indian Affairs, to Messrs. Kennedy and Wilson, dated January 29th, 1838.

"I know of no law by enforcing which the practice of charging exorbitant fees for services as attorneys for the Indians can be prevented. But it seems to be competent for you to decline making payments to attorneys in any instance in which you are not satisfied they will not retain more than a reasonable per centage for their services, and will pay over the balance to the Indians in good faith. This may lead to the refusal to recognise powers of attorney at all. I do not anticipate this; but, should it become necessary, the propriety of the measure, and the right to resort to it, are sufficiently clear."

Extract of a letter from C. A. Harris, Commissioner of Indian Affairs, to Messrs. Kennedy and Wilson, dated February 5th, 1838.

"I enclose an extract from a communication from the Attorney General,* explanatory of that portion of his opinion to which you desired his attention might be called.

"I take this occasion to say that, as the payments of money in lieu of reservations are to be made by the United States according to the Attorney General's opinion, a separate account should be kept of them, and no requisitions made by you upon the disbursing officer for them until an appropriation is obtained from Congress.

"I will also thank you to inform this office, that it may be able to answer inquiries, what number of claims of each class, provided for in the treaty, have been admitted by you, the general principles upon which you have required evidence to be furnished, and the amount of each admitted class, and the probable amount of those yet to be finally acted upon."

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*See "Opinions Attorneys General," House Doc. No. 123, 26th Congress, 2d session, p. 1165 *et seq.*

WAR DEPARTMENT,
Office Indian Affairs, February 8, 1838.

GENTLEMEN: I have the honor to request that you will transmit to this office a transcript of the record of your proceedings in relation to, and copies of all the papers in, the case of Mr. Lowrey, who, it has been represented, has received compensation for services as counsel for the Cherokees. The transcript should show names of commissioners present, and dates, and with the copies be accompanied by an expression of your opinions and views in regard to it, and a statement of the reasons and principles upon which it was allowed.

It is the opinion of the department that your attention and efforts should be directed to the closing of all the business under the treaty by the 23d of May next, and that you should give public notice that all claims must pe presented to be acted upon by that day. It is also considered proper that you should establish a rule not to review any case that has been once decided.

In my letter of the 5th inst. I intimated that no requisition should be made on the disbursing officer for payments in lieu of reservations until an appropriation was obtained. When you have come to final results in this branch of the business, I will thank you to make a separate report in full, that the subject may be examined here, and the exact amount required asked of Congress.

In the same letter I requested some information respecting the number and amount of claims acted upon and to be acted upon by you, to enable me to answer inquiries and allegations, some of which impugn the motives and conduct of the department and the commissioners. I have now to request that, in conformity with your original instructions, the duplicate records of your doings may be transmitted without delay. I presume the books of the valuing agents, the register of payments, your docket and decision books, embracing every claim of every description allowed by you, with the papers upon which your action was based, can be furnished without embarrassing your future proceedings; and it is important that they should be here, so that the means of refuting charges and giving satisfactory answers to questions may be within reach. Your prompt attention to this matter, and compliance with these instructions, are deemed essential.

Very respectfully, your obedient servant,

C. A. HARRIS.

JOHN KENNEDY,
T. W. WILSON,
Calhoun, Tennessee.

WAR DEPARTMENT,
Office Indian Affairs, May 9, 1838.

GENTLEMEN: I have received your letters of the 19th and 20th ultimo, with the enclosures.

The opinion of the department coincides with that expressed by Mr. Bell, that claims for spoliations of persons who emigrated prior to June, 1833, ought not to be paid from the funds provided for that object in the treaty of 1835.

You were instructed, on the 8th February last, to transmit to this office copies of the various registers, records, and papers of the commission. As it may be presumed, now, that but a short interval will elapse before the originals themselves may be sent, you will please to consider the instruction referred to as waived. The copies of any of them that have been prepared, or are in progress, and that may be necessary, may be forwarded in charge of one of the officers accompanying emigrants, to Captain J. R. Stephenson, disbursing agent for the Cherokees at Fort Gibson. He should be furnished by you, as soon as practicable, with copies of all the documents and papers that in your opinion will be important to the interests of the Indians, or useful to him in the discharge of his duties.

Such explanations should be given as will enable him to make all payments, and to answer all inquiries promptly and correctly. For the speedy completion of this branch of the business, you are authorized to employ as many clerks as may be necessary.

I will thank you, immediately on the receipt of this, to report in detail all the business of the commission (specifying the different classes and amount in each) that you have just reason to believe will remain unfinished on the 23d of May. The department does not consider that your appointments will terminate then necessarily, and you will continue in the performance of your uncompleted duties, if there be any such, until otherwise instructed. To aid in the formation of correct opinions on this last point, you are requested to communicate your views as to the time, the number of persons, and place of operations, requisite and best adapted to insure the early close of the branch of business appertaining to your commission. When can the originals be sent here without detriment to the service? When can your office be closed? Will copies be needed by the superintendent of emigration, or by any other officer or agent? And if copies must be made for him, and retained in the country east of the river, will any supervision besides that of the superintendent be necessary?

Very respectfully, your obedient servant,

C. A. HARRIS.

Messrs. JOHN KENNEDY,
T. W. WILSON,
JAMES LIDDELL,
Calhoun, Tennessee.

WAR DEPARTMENT,
Office Indian Affairs, May 26, 1838.

GENTLEMEN: I have the honor to enclose a copy of a letter addressed to this department on the 11th of April, by the Hon. J. L. Williams, and of an opinion* of the Attorney General upon several of the points therein presented, and others stated in the accompanying copy of my letter to the Secretary of War.

You are requested to report explicitly your proceedings and views in regard to claimants under the agreement with Colonel Montgomery, to those who received partial payments from Mr. Starr, and to those who claim reservations under the treaty of 1819. In respect to the latter, an allegation is made, which affects the integrity of your doings, and which it is important should be satisfactorily met.

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* See "Opinions Attorneys General," House Document No. 123, 26th Congress, 2d session, p. 1182 *et seq.* (Error in *date*—read "1838" for "1839.")

Very respectfully, your obedient servant,

C. A. HARRIS.

Messrs. J. Kennedy,
T. W. Wilson,
J. Liddell,
Calhoun, Tennessee.

War Department,
Office Indian Affairs, June 14, 1838.

Gentlemen: Mr. William S. Coodey has presented to this office a statement of the proceedings that have taken place in the case of the minor heirs of M. D. and Mary Scales, accompanied by copies of several letters from yourselves and other persons.

It appears from these papers that the sum of $2,000, the assessed value of a ferry belonging to the estate of the father of these children, has been paid by you to Mr. Asahel Rawlins. That Rawlins received this money as their guardian, under an appointment from the county court of Hamilton county, Tennessee, of which he was at that time clerk. That the children had never lived in that county, but were at the time, and long before, west of Arkansas, where Mr. Joseph Coodey had been appointed administrator on the estate of the father, and guardian. That upon being informed of the last recited facts by Mr. W. S. Coodey, the attorney of Joseph, you called upon Rawlins to pay the $2,000 to him; and upon learning his refusal to do so, you declined advancing the amount, on the ground that it would be a double payment. There are other allegations imputing fraudulent intent and practice to Rawlins, to which you will give due attention. I enclose copies of the papers filed by Mr. Coodey, for your inspection. You will examine the statements in them, and if satisfied of their correctness you will please to take the usual and proper measures for paying the amount to whoever is entitled to receive it. You will then cause a peremptory and unqualified demand to be made upon Rawlins for its return to the disbursing officer, and, if he does not immediately comply with such demand, cause legal measures, in the proper court, to be taken to compel a restitution of the money to the United States.

Very respectfully, your obedient servant,

C. A. HARRIS.

Messrs. J. Kennedy,
T. W. Wilson,
J. Liddell,
Calhoun, Tennessee.

War Department,
Office Indian Affairs, June 19, 1838.

Gentlemen: I am directed by the Secretary of War to instruct you that, in his judgment, no payments whatever should be made on account of reservation claims under the treaties of 1817 and 1819, either to the Indian reservees or to their assignees. But you are requested to proceed in and to complete the examination of these claims, and to report each case, and the testimony bearing upon it, in full to this department. If, as there seems to be reason to apprehend, more extensive powers will be required to enable the agents of the government to arrive at the truth, such measures as may seem proper will be adopted.

Very respectfully, your obedient servant,

C. A. HARRIS.

Messrs. JOHN KENNEDY,
T. W. WILSON,
JAMES LIDDELL,
Calhoun, Tennessee.

WAR DEPARTMENT,
Office Indian Affairs, June 20, 1838.

GENTLEMEN: I enclose a copy of a letter from Wm. S. Coodey, relative to the claims of George Guess for improvements abandoned. You are requested to ascertain the facts, direct the necessary measures to be taken to secure him in his rights, and report your proceedings.

Very respectfully, your obedient servant,

C. A. HARRIS.

Messrs. J. KENNEDY,
T. W. WILSON,
J. LIDDELL.

WAR DEPARTMENT,
Office Indian Affairs, September 7, 1838.

GENTLEMEN: Lieutenant Van Horne's accounts for disbursements under your requisitions for balances due to Cherokee emigrants, payable west of the Mississippi, have been suspended by the accounting officers of the Treasury Department, on account of the insufficiency of the documents furnished by the commissioners to that officer. This occurrence has led to a more careful examination of the duplicates of those papers which were forwarded to this office, and the result is, that, in my opinion, the two lists of balances forwarded to this office, under dates of November 10, 1837, and April 20, 1838, and which are supposed to be counterparts of those sent to Lieutenant Van Horne, are entirely insufficient to authorize any payments upon them.

The awards and decisions of the board of commissioners under the late Cherokee treaty, as I view them, are analogous to judgments at law, and the exemplification of the record of those decisions should, in my apprehension, when furnished for the purpose of carrying them into effect, bear upon their face their real character, and be authenticated as fully and intelligibly as other documents appertaining to other legal adjudications, so that no extraneous proofs shall be necessary to give full effect to such evidence, or to justify payments made in pursuance thereof.

Enclosed I return to you the two lists of balances above mentioned for your inspection, and that such deficiencies as you may see to exist may be supplied, either by additions or by making new lists. You will perceive that the list forwarded to this office on the 10th November last has no suitable title to designate its character, and is not authenticated in any manner whatever, nor any requisition appended thereto. The lists of balances forwarded under date of 20th of April last, although less defective, is deemed insufficient, both in the caption and authentication, and especially as it contains no requisition or warrant for payments.

I take the liberty to enclose to you a form for the caption, authentication, and requisition, which I think should be appended to the lists of balances to be paid west, in order that they shall serve as vouchers for the accounts of the disbursing officers; and, unless you shall discover objections, I have to request that you will make out and forward to Lieutenant Van Horne new lists in the form and with the authentication and requisition therein prescribed, and also a duplicate to this office. I also suggest the expediency of transmitting to the disbursing officer west, duplicates of the lists of balances for his use—one to be kept in his office, upon which to make payments from time to time as emigrants may arrive, and the other to be forwarded with his accounts to this office, to be used as vouchers in the Treasury Department.

Very respectfully, your obedient servant,

C. A. HARRIS.

JOHN KENNEDY,
T. W. WILSON,
JAMES LIDDELL, Esqrs.
Calhoun, Tennessee.

WAR DEPARTMENT,
Office Indian Affairs, September 14, 1838.

GENTLEMEN: Herewith I transmit copies of three opinions of the Attorney General. Two of them, dated the 26th of May* and 27th of August† last, contained the views of that officer upon the opinion of Judge Kennedy on Looney Riley's claim for a reservation under the Cherokee treaties, which was transmitted to this office by Messrs. Kennedy and Wilson under date of 4th May last, and was submitted to him, as requested, with the statement forwarded by Messrs. Wilson and Liddell on the 11th May.

The third, dated the 27th ultimo, was given in answer to questions forwarded upon extracts from your letters of the 11th May and 11th of June last, in compliance with your request; and on certain arguments in relation to the construction of the Cherokee treaties, prepared by John F. Gillespy, esq., and enclosed to this office by Hon. Jos. L. Williams, on the 15th and 25th of June last, with the request that the opinion of the Attorney General might be had on them.

Very respectfully, your obedient servant,

C. A. HARRIS.

Messrs. J. KENNEDY,
T. W. WILSON,
JAS. LIDDELL,
Commissioners, &c., Calhoun, Tennessee.

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* Opinion of 26th May, 1838—copy herewith transmitted.

† Two of this date—see House Doc. No. 123, 26th Congress, 2d sess., "Opinions of Attorneys General," pp. 1209-'10.

ATTORNEY GENERAL'S OFFICE,
May 26, 1838.

SIR: Pursuant to the request contained in your letter of the 22d instant, I have perused the opinion of Mr. Kennedy, one of the commissioners under the Cherokee treaty, in the case of Looney Riley, and have the honor to state that, in my opinion, the views taken in that paper, and the conclusion to which it comes, are correct.

I am, sir, very respectfully, your obedient servant,
B. F. BUTLER.

Hon. J. R. POINSETT,
Secretary of War.

WAR DEPARTMENT,
Office Indian Affairs, September 25, 1838.

GENTLEMEN: In June and July last you were requested to report your progress in the reservation cases, and on the claims of George Guess and Catharine Stephens; and in 1837 a report was called for on the claims of Ann Hyatt, Betsy Huffaere, and James Brown. I have to request that your attention may be directed to these matters, and such information as you may collect be transmitted early, that this office may be able to answer the inquiries addressed to it.

Very respectfully, your obedient servant,
C. A. HARRIS.

Messrs. JOHN KENNEDY,
T. W. WILSON,
J. LIDDELL,
Calhoun, Tennessee.

WAR DEPARTMENT,
Office Indian Affairs, October 15, 1838.

GENTLEMEN: I have had the honor to receive your letter of the 21st ultimo. The sum of $50,000 will be immediately remitted to Captain Simonton, in compliance with your suggestion.

To enable the department to make suitable provision for the balances payable west, you will be pleased to transmit, as soon as possible, a statement showing the aggregate of the sums allowed by you, which are to be paid by the disbursing officer after the arrival of the Cherokees at their new homes.

Very respectfully, your obedient servant,
C. A. HARRIS.

Messrs. JOHN KENNEDY,
T. W. WILSON,
J. LIDDELL,
Calhoun, Tennessee.

WAR DEPARTMENT,
Office Indian Affairs, January 14, 1839.

GENTLEMEN: Your letter of the 24th ultimo, with the accompanying papers, has been received, and laid before the Secretary of War.

By his direction, the latter are now returned, as the department has no authority to interfere in the adjudication of any claims against the Cherokees the final decision of which is committed to you by the treaty. This view of the power of the department is confirmed by the opinion of the Attorney General of August 27th, 1838, a copy of which was sent to you on the 14th September following.

Very respectfully, your obedient servant,

T. H. CRAWFORD.

Messrs. JOHN KENNEDY,
T. W. WILSON,
JAMES LIDDELL,
Athens, Tennessee.

WAR DEPARTMENT,
Office Indian Affairs, February 11, 1839.

GENTLEMEN: I have received two letters from you, dated January 25th. Whatever balances are due to the Cherokees in North Carolina will be paid to them as early as possible. Beyond this the department, regarding the treaty of 1835 as executed on the part of the United States, so far as the Indians who remain are concerned, will not go. They remain under the jurisdiction of North Carolina, and their connexion with the general government is dissolved. It follows that no issues of provisions, money, or other articles, will be made to them. If they should, at any future time, express a desire to avail themselves of any of the stipulations of the treaty, the department then shall decide upon what shall be done for them. The sum that may remain in the hands of Mr. Cruttenden, from the proceeds of the property of Cherokees who have emigrated, will be held by him subject to the order of this office. Meantime you will please forward to the disbursing agent west a list of the names of the persons entitled to it, and of the amount due each. A copy of this list should be sent here. In regard to the claims to *per capita* allowances, I have to remark that the ascertainment of these is not considered to be within the scope of your commission, and it will be left to the discretion of this department.

As you have been instructed to terminate your labors and transmit your records, it is deemed unnecessary to return to you the papers in the case of Mr. Rogers. Your letter before me will be filed with them, and will be sufficient evidence of your rejection of his claim.

Very respectfully, your obedient servant,

T. HARTLEY CRAWFORD.

Messrs. JOHN KENNEDY,
T. W. WILSON,
J. LIDDELL,
Athens, Tennessee.

WAR DEPARTMENT,
Office Indian Affairs, *February* 11, 1839.

GENTLEMEN: In September last General Smith transmitted to this office transcripts of the valuations of the missionary establishments in the Cherokee country. On comparing that of the buildings, &c., at Hightower, with the appraisement of them in 1832, for Thomas Pettit, it appears that the former exceeds the latter $2,610. There is a difference, also, between the valuation of the buildings at Haweis, for John Fields, and that reported by you, of $497 25 in favor of the latter. The department has decided to sustain the title of the missionaries to these premises; but, before making any payments, deems it proper to call on you for explanations, which you are accordingly requested to furnish. You will also please to state from what fund the Moravians were paid by you.

Very respectfully, your obedient servant,
T. HARTLEY CRAWFORD.

Messrs. JOHN KENNEDY,
T. W. WILSON,
J. LIDDELL,
Athens, Tennessee.

WAR DEPARTMENT, *January* 17, 1844.

SIR: The President of the United States having this day removed from office Messrs. Eaton and Hubley, the commissioners appointed under the treaty of 1835 with the Cherokees, you will please apprize them of this action, and direct the secretary of the board, Col. C. K. Gardner, whose duties also cease by the removal of the commissioners, to deposite the books and papers pertaining to the commission in the office of the Commissioner of Indian Affairs.

Very respectfully, yours,
J. M. PORTER,
Secretary of War.

T. H. CRAWFORD,
Commissioner of Indian Affairs.

WAR DEPARTMENT,
Office Indian Affairs, *January* 17, 1844.

SIR: I have been directed to inform you that you have ceased to be commissioner under the 17th article of the treaty with the Cherokees of 29th December, 1835.

As the simplest mode of performing a disagreeable duty, I enclose you a copy of the communication of the Secretary of War of this date to me, conveying the determination of the President of the United States, and the order which makes it my duty to write this letter.

Very respectfully, your obedient servant,
T. H. CRAWFORD.

Hon. JOHN H. EATON,
Nashville, Tennessee.

Same to Edward B. Hubley, Orwigsburg, Schuylkill county, Pennsylvania; and on the 18th January to Merchants' Hotel, Philadelphia.

WAR DEPARTMENT,
Office Indian Affairs, March 11, 1845.

SIR: I have the honor to acknowledge the receipt of your letter of the 8th ultimo, addressed to the Secretary of War, and by him referred to this office for an answer.

The act of the 7th June last contains the following provision: "For compensation of two commissioners to examine claims under the treaty with the Cherokees of one thousand eight hundred and thirty-five, and pay of secretary, including provisions for Indians during the session of the board, and for contingent expenses, $11,500;" and then makes a like appropriation for the expenses of the Choctaw commission, ending with this proviso: "*Provided*, That the duration of either of said commissions shall not extend beyond one year from the passage of this act." (Pamphlet Laws 1844, page 74.)

My object in calling your attention to this law arises from the statement made in your letter, that you should have learned from this office that your commission and that of Colonel Washington was limited to one year. The commission reads, "during pleasure;" but, nevertheless, the law which I have quoted above ends the commission on the 17th day of June next. The act of Congress is positive; and after that time the powers of the commissioners must cease.

This is no isolated opinion of my own; for every one who reads it must give it the same interpretation.

There was no appropriation made by law during the last Congress in regard to the Cherokee commission, and consequently the act of June 17, 1844, must be binding, and the commission of which you are a member must end on the day referred to.

Very respectfully, your obedient servant,

T. H. CRAWFORD.

Gen. JOHN T. MASON,
Cherokee Commissioner, Fort Gibson, Arkansas.

WAR DEPARTMENT, *May* 26, 1845.

GENTLEMEN: The conversation I had with you since your return, and the very intricate and important questions presenting themselves to your board, have occasioned me much reflection. I should feel obliged to you for a full expression of the construction you put on the various stipulations of the treaty of 1835, between the Cherokees and the United States.

The first inquiry that suggests itself is—who are entitled to participate in the benefits which, by the stipulations of the treaty, are to be extended to the Indians?

2d. Are not many of them entitled to certain benefits, and excluded from sharing in others? On this point I will be gratified to have your views, in as much detail as may be conveniently practicable. It seems to me to divide itself into many subordinate inquiries; among which is the one, whether the Cherokees remaining east are entitled to, and can legally receive, the commutation for removal, and twelve months' subsistence, &c.

3d. I also desire to have your views *in extenso* on the subject of reservations, which have always been regarded as a very important branch of this treaty, in relation to which diversity of opinion appears to have prevailed; and in this may be included the question, whether pre-emption rights have, or have not, been absolutely abrogated?

It would be agreeable to me to have your construction of the 16th article of the treaty of 1835, and of the supplement, as operating on the main treaty; and of how far the Cherokee fund is liable to furnish the means of meeting claims, and where the United States are responsible.

If any other point strikes yourselves as being worthy of special comment, I will thank you to make it; giving, if you please, on the different questions, your opinions, together with the reasons for them, as much at length as may be necessary to possess me of your views thereon.

Very respectfully, your obedient servant,

W. L. MARCY,
Secretary of War.

Col. GEO. C. WASHINGTON,
Gen. JOHN T. MASON,
Cherokee Commissioners, &c.

WAR DEPARTMENT, *June* 18, 1845.

GENTLEMEN: The President has received and considered your letter of the 10th instant, and has instructed me to communicate to you his decision on the question which you referred to him.

The treaty "between the United States and the chiefs, head men, and people of the Cherokee tribe of Indians," was ratified on the 23d day of May, 1836, with an amendment that put these words into the 17th article: "All the claims arising under, or provided for in the several articles of this treaty, shall be examined and adjudicated by such commissioners as shall be appointed by the President of the United States, by and with the advice and consent of the Senate of the United States, for that purpose, and their decision shall be final; and on their certificate of the amount due the several claimants, they shall be paid by the United States."

Appropriations were made of the several sums supposed to be necessary for the execution of the treaty, by law of 2d July, 1836; and among them, "For compensation of two commissioners for two years to examine claims, according to the seventeenth article of said treaty, at eight dollars per day each, eleven thousand six hundred and eighty dollars;" "For compensation to a secretary for two years, at five dollars per day, according to the same article of said treaty, three thousand six hundred and fifty dollars;" and, "For compensation to an interpreter for two years, at two dollars and fifty cents per day, according to same article of said treaty, one thousand eight hundred and twenty-five dollars."

Under the treaty and appropriation two commissioners were appointed, with a secretary, &c., who opened their session as a board, in the then Cherokee country east, on the 7th day of December, 1836. The members of the tribunal were increased by the appointment of a third commissioner, for whose compensation an appropriation was made on 7th July, 1838, but who had been appointed on the 16th October preceding.

On the 7th day of January, 1839, it being supposed that sufficient time had been allowed for the adjudication of all just claims, and that they either had been or might have been presented, especially as the great bulk of the Cherokee people had, in the summer or fall of 1838, been removed to the west, the board was instructed to terminate its session, to close its business, and report the result of its labors: this was done on the 5th of March, 1839, showing that their decrees exceeded the sum of $2,300,000.

The matter so rested until the 26th day of August, 1842, when an act of Congress appropriated, "For compensation to two commissioners to examine claims under the treaty with the Cherokees of eighteen hundred and thirty-five, and pay of a secretary and provisions for Indians during the session of the board, and for contingent expenses, thirteen thousand five hundred dollars; and for arrearages of the late board of commissioners under the same treaty, one thousand five hundred and fifty-eight dollars."

Hon. Messrs. J. H. Eaton and James Iredell were commissioned on 5th September, 1842; and Mr. Iredell declining the appointment, Hon. E. B. Hubley was, on the 8th day of November, 1842, appointed in his stead.

These gentlemen remained in office until 17th January, 1844, when they were severally removed by the President of the United States, and you were appointed to succeed them, of which you were advised on 3d June following. On the 17th of the same month a law was passed, appropriating, "For compensation to two commissioners to examine claims under the treaty with the Cherokees of one thousand eight hundred and thirty-five, and pay of secretary, including provisions for Indians during the session of the board, and for contingent expenses, eleven thousand five hundred dollars." The next paragraph appropriated money for the contingent expenses of the Choctaw commission, and added: "*Provided*, That the duration of either of said commissions shall not extend beyond one year after the passage of this act." And of this provision of the law you were apprized in a communication from the Indian Bureau of 20th June last, within three days of its enactment.

It appears, therefore, that your appointment as commissioners was due to the act of Congress of 1842, and the existence of the commission has likewise been limited in act of Congress of 1844. The President who appointed the commission approved the bill limiting its duration. Under these circumstances the President does [not] consider himself authorized to prolong the existence of the commission; and he has therefore instructed me to communicate to you his deference to the decision of Congress.

You will, therefore, gentlemen, consider your commission as having expired yesterday.

You will please to transmit to the Indian Bureau all records and papers that you have received or made in your official capacity.

I have the honor to be, gentlemen, very respectfully, your obedient servant,

GEORGE BANCROFT,
Acting Secretary of War.

Messrs. John T. Mason and George C. Washington,
Late Commissioners under Cherokee treaty of 1835.

D.

List of communications and instructions to Cherokee commissioners, transmitted to Senate of United States on the 12th January, 1838, under resolution of 13th October, 18 7; printed in Senate Doc. No. 120, 25th Congress, 2d session, volume 23d.

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E.

List of papers trsnsmitted to Senate United States, January 16, 1844, *under Senate resolution of 20th December*, 1843, *viz:*

A. Extract of letter from Commissioner of Indian Affairs to Cherokee commissioners, dated February 8, 1838.

B. Extract of letter from Commissioner of Indian Affairs to Cherokee commissioners, dated May 9, 1838.

C. Copy of letter from Commissioner of Indian Affairs to Cherokee commissioners, dated January 17, 1839.

H 1. Copy of letter from Commissioner of Indian Affairs to Cherokee commissioners, dated September 28, 1842.

H 2. Copy of letter from Commissioner of Indian Affairs to Cherokee commissioners, dated August 10, 1843.

H 4. Copy of letter from Secretary of War to Cherokee commissioners, dated October 5, 1843.

H 5. Copy of letter from Secretary of War to Cherokee commissioners, dated November 25, 1843.